

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

GREGORY CLARK ROLLINS,)	
)	
Plaintiff,)	
v.)	
)	No. 07-0820-CV-W-FJG
ARROW CLEANERS,)	
)	
Defendant.)	

ORDER

Pending before the Court are (1) Plaintiff's Application for Leave to File Action without Payment of Fees (Doc. No. 1); and (2) Plaintiff's Application for Appointment of Counsel (Doc. No. 3). Together with plaintiff's motions is plaintiff's Affidavit of Financial Status (Doc. No. 2).

I. Application for Leave to File Action without Payment of Fees (Doc. No. 1)

Pursuant to 28 U.S.C. § 1915, this Court may authorize the commencement or prosecution of any suit without prepayment of fees when an applicant files an affidavit stating that he is unable to pay the costs of the lawsuit, and the Court determines that the lawsuit is not frivolous or malicious.

The Court must exercise its discretion in determining whether an applicant is sufficiently impoverished to qualify under § 1915. Cross v. Gen. Motors Corp., 721 F.2d 1152, 1157 (8th Cir. 1983). Such showing of poverty is sufficient if the applicant would become completely destitute or be forced to give up the basic necessities of life if required to pay the costs of the lawsuit. Adkins v. E.I. Du Pont De Nemours & Co., 335 U.S. 331, 339 (1948); Local Rule 83.7(a) (1999). A review of plaintiff's affidavit reveals that he is sufficiently impoverished to qualify under § 1915.

However, the Court's inquiry does not end with a finding of sufficient

impoverishment. Instead, the Court “shall dismiss” cases filed in forma pauperis “at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

In the present matter, plaintiff has named Arrow Cleaners as the defendant in this matter. Plaintiff alleges that “[t]hey shrunk a favorite leather coat of mine. I tried to resolve this with them several times but they just ignore me.” The relief plaintiff requests is \$5,000 in property and personal injury.

After a review of plaintiff’s proposed complaint, it is clear that plaintiff’s case is frivolous and fails to state a claim upon which relief can be granted. In particular, federal courts are courts of limited jurisdiction, and this Court does not have subject matter jurisdiction unless plaintiff’s claims present a federal question (28 U.S.C. § 1331) or a controversy between citizens of different states where the amount in controversy exceeds the sum of \$75,000 (28 U.S.C. § 1332). Plaintiff’s complaint does not present a federal question; instead, it appears to be a state law tort claim. Further, plaintiff seeks less than \$75,000 and defendant appears to be a citizen of the same state as plaintiff. Therefore, plaintiff’s claim is frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B).

Therefore, for the foregoing reasons, plaintiff’s Application for Leave to File Action without Payment of Fees (Doc. No. 1) is **DENIED**.

II. Motion to Appoint Counsel (Doc. No. 3)

Plaintiff has requested appointment of counsel. As the Court has found that plaintiff’s proposed complaint is frivolous and fails to state a claim upon which relief may be granted, plaintiff’s motion for appointment of counsel (Doc. No. 3) will be **DENIED**.

III. Conclusion

Accordingly, it is hereby **ORDERED** that:

1. Plaintiff’s Motion to Proceed In Forma Pauperis (Doc. No. 1) is **DENIED**;

2. Plaintiff's Motion to Appoint Counsel (Doc. No. 3) is **DENIED**; and
3. This case is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B). This dismissal is without prejudice to the filing of a paid complaint.

IT IS FURTHER ORDERED that the Clerk of the Court send a copy of this order via regular and certified mail to plaintiff at the following address:

Gregory Clark Rollins
3304 Colorado
Kansas City, MO 64128

IT IS SO ORDERED.

Date: 10/31/07
Kansas City, Missouri

S/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
Chief United States District Judge